possessor must know the nature of the thing possessed, must have in him a power of disposal over the thing, and lastly must be conscious of his possession of the thing. If these factors are absent, his possession can raise no presumption of *mens rea,* without which (except by statute) possession cannot be criminal. It was necessary therefore to put these factors before the the jury. It was essential to direct the jury that before they could convict the accused of being in "unlawful possession", they must be satisfied that he knew the boxes contained ammunition. Such knowledge was of the essence of the offence and to quote *Halsbury* Vol. IX p. 12 para. 4. "Where a particular intent or state of mind is of the essence of an offence, the person committing the act is not criminally responsible if he had no *mens rea* and the act was ordered or procured by another person — but the person who ordered or procured the act is criminally responsible."

Accused No. 2 was engaged fortuitously in a nearby village to help unload 40 odd boxes on a sampan on to a lorry. In fact, it was a Police trap, but it might very well have been pointed out to the jury that D.P.C. 4026 taking part in the trap and who also assisted in the unloading stated that he did not know and could not see what the boxes contained. The accused told us that he thought the boxes contained tinned provisions.

For all these reasons we thought that the trial was unsatisfactory and that there should be a new trial.

New Trial Ordered.

NG KIM BENG v. TAY SIONG CHUAN.

[App. Civil Juris. (Gordon-Smith, Ag. C.J.)
February 16, 1949]

[Singapore — District Court Appeal No. 17 of 1948]

Landlord and Tenant — Control of Rent Ordinance, Ss. 12(2), 14(1) (d) and (m) — "Premises", definition of — Letting into possession of exclusive use of two rooms with use in common of dining room, bathroom, lavatory and kitchen where each has his own cooking space — Whether "part of house let as a separate dwelling" or a "sharing agreement" — Whether English decided cases referable and applicable.

In this case the Appellant (Defendant) was the tenant to the Respondent (Plaintiff) of two rooms of the first floor of house No. 369 Onan Road, Singapore and had the right to use, in common with the landlord, the Respondent (Plaintiff), the back portion of the ground floor of the house which he used as a dining room, the kitchen where each had his own cooking space, the bathroom and lavatory. The question before the Court was whether or not, in the circumstances, the premises rented to the appellant were premises within the meaning of the Control of Rent Ordinance No. 25 of 1947.

Held, that there was a sharing of the house in question and there was no tenancy protected by the Control of Rent Ordinance.

The facts are fully set out in the Judgment of Bellamy, D.J.

Cases referred to :—

(1) *Llewellyn v. Hinson* (1948) 2 A.E.R. 95.
(2) *Neale v. Del Soto* (1945) 1 A.E.R. 191.
(3) *Sharpe v. Nicholls* (1945) 2 A.E.R. 55.
(4) *Cole v. Harris* (1945) 2 A.E.R. 146.
(5) *Kenyon v. Walker* (1946) 2 A.E.R. 595.
(6) *Winters v. Dance* W. N. July 31, 1948 p. 318.
(7) *Leonard v. Nachiappa Chetty* 4 F.M.S.L.R. 265.

Bellamy, D. J. : — This case raises a short but very important point in regard to lettings in the Colony where the tenant has the exclusive use of some rooms in a house and shares certain accommodation in the same house with others.

The agreed facts are that the defendant is the tenant to the plaintiff of two rooms on the first floor of the house in question and has the right to use, in common with his landlord, the plaintiff, the back portion of the ground floor of the house which he uses as a dining room, the kitchen where each has his own cooking space, the bathroom and lavatory. The question is whether or not in these circumstances, the Control of Rent Ordinance applies.

In the Control of Rent Ordinance "premises" is defined, leaving out immaterial words, as "any dwelling house.....and any part of any premises let or sublet separately". It follows that before the Ordinance can apply there must be a letting of a dwelling house as a whole or a letting of any part of a house separately.

The point taken by the plaintiff is that the part of the house that was let to the defendant was not let "separately" and that in this case, it is contended, there is a sharing of the house and that accordingly, the Control of Rent Ordinance does not apply. Reliance is placed upon *Neale v. Del Soto*(2) where it was held that where there was a letting of certain rooms in a house together with the right to use the kitchen in common with the landlord, there was no letting as a separate dwelling house. This case was followed in *Cole v. Harris*(4), where certain rooms which did not include a kitchen were used in common by the landlord and two tenants.

Mr. Morrison has urged that the English decisions do not apply as the Rent Restriction Acts are not the

same as the Colony Ordinance. I am well aware that the English Acts and the Control of Rent Ordinance of Singapore are not in *pari materia* and I am also well aware of the danger of relying on cases decided on the law of England where such law is not in *pari materia* with our local law. In *Leonard v. Nachiappa Chetty*[7], the learned Judge said :—

> Before reliance can be placed on English decisions, particularly decisions on points of procedure it is necessary in the first instance to examine carefully our local law and to ascertain what it is and in what respects it resembles or differs from the English law.

The English decisions upon which reliance is placed in this case depended upon the construction of Section 12(2) of the Act of 1920 and Section 16(1) of the Act of 1933. The former reads: "This Act shall apply to a house or part of a house let as a separate dwelling....." and in the latter, "'dwelling house' has the same meaning as in the principal Acts, namely a house let as a separate dwelling or a part of a house being a part so let". The material and relevant words in the definition of "premises" in the local Ordinance is "any part of any premises let or sublet separately". In my view "separately" here means what it says, namely as a separate premises.

In the present case the right to use the ground floor, the kitchen, the bathroom and lavatory cannot be separated in my view from the exclusive use of the two rooms on the first floor. In my view, the two rooms let by the plaintiff to the defendant are not "in any part of any premises let or sublet separately". What was let were the two rooms together with the use in common with the plaintiff of the ground floor, bathroom, kitchen and lavatory. Adopting the language of Morton, L.J. in *Neale v. Del Soto*[2] the real substance of the matter here is that there was a sharing of this house each party had the exclusive use of some rooms and the two parties had the use in common of certain other rooms.

For these reasons, in my opinion, this letting was never within the Control of Rent Ordinance, 1947. It follows in my Judgment that the term and interest of the defendant, having been duly determined by a legal, valid and effective notice to quit, the plaintiff is entitled to possession of the premises.

There must be Judgment for the plaintiff for possession, order of possession suspended 21 days and $74.54 being mesne profits at the rate of $30.00 p.m. from 1.10.48 to 15.12.48 with costs.

Appeal by the Defendant (Appellant) from the Judgment of His Honour Civil District Judge Alexander W. Bellamy dated the 24th November 1948.

DISTRICT COURT APPEAL.

Mark Morrison for the Appellant (Defendant).

Harris for the Respondent (Plaintiff).

Gordon-Smith, Ag. C. J. : — This is an appeal against the decision of the learned District Judge, given on the 24th November 1948, whereby an order for possession of certain premises was made in favour of the landlord, the plaintiff-respondent. The basis of his decision was that the Control of Rent Ordinance No. 25 of 1947 had no application to the facts and circumstances of this particular case and that, due notice having been given to terminate the agreement, the landlord was entitled to an order for possession. The learned District Judge gave his reasons for so holding in a careful and lucid judgment after considering the points raised on behalf of the tenant, which points were repeated in argument before me. The whole point in issue is whether cases decided in England on the English Rent Restrictions Acts have any application to our local Control of Rent Ordinance. The learned District Judge compared the relevant and respective legislation in regard to the construction of "premises" to which such legislation applies. The main distinction to be drawn is that whereas the English legislation is restricted to dwelling houses, our local legislation applies not only to dwelling houses and flats but also to factories, warehouses, offices, shops, schools and the like: see definition of "premises" in s. 2 of the Ordinance.

The English Act of 1920 (see s. 12(2)) applies only to "a house or a part of a house let as a separate dwelling....." of less than a certain annual value. The Act of 1933 (Chapter 32) in s. 16(1) repeats the definition as follows: "Dwelling house has the same meaning as in the principal Acts, that is to say, a house let as a separate dwelling or a part of a house being a part so let". To return to our local definition of "premises" it goes on to include "any part of any premises let or sub-let separately". Except, therefore that our definition includes other than dwelling houses, the respective definitions are *in pari materia* in that the respective legislation refers and is applicable to "a house or a part of a house let as a separate dwelling house" (as well as any local premises) and "any part of any premises let or sub-let separately".

In my opinion, therefore, English decided cases are referable and applicable. There have been

thousands of such cases but I need only refer to one or two recent Court of Appeal decisions. Before doing so it is desirable to set out the relevant facts of the case, which are not in dispute. The landlord agreed to the exclusive use and occupation by the appellant of two rooms on the first floor. He also agreed to the appellant having the joint use with himself of the front and back portions of the ground floor, including the joint use of the bathroom, kitchen and lavatory and of light and water and of the entrance hall, used as a joint dining room.

In *Llewellyn v. Hinson*[1], in the Court of Appeal, the tenant under his agreement had been given the exclusive possession of certain rooms together with the user, jointly with other tenants, of a bathroom, water closet and kitchen. The earlier cases of *Neale v. Del Soto*[2]; *Sharpe v. Nicholls*[3]; *Cole v. Harris*[4]; and *Kenyon v. Walker*[5], were all followed and applied and it was held that the kitchen being a living room, the tenant had not been let "a part of a house let as a separate dwelling" within the meaning of s. 16(1) of the Act, quoted above.

In *Winters v. Dance*[6], another Court of Appeal case, the same ruling was applied to a "kitchennette", seven feet by six feet, in which case also there was the joint use of a bathroom and lavatory. Tucker, L.J., said that the cases indicated that one of the tests in deciding whether the tenancy of a part of a house let as a separate dwelling was whether the tenant shared one of the essential living room. If that living room was shared, even if only for the purpose of cooking, then there would be a sharing agreement and not a letting within the Rent Restriction Acts.

In the present case it is not only the case of a kitchen being shared but also of a dining and other rooms being similarly shared, with the landlord himself and not with other tenants.

In my opinion, and the facts being as they are, I am bound by these Court of Appeal decisions, as was the learned District Judge and I agree entirely with his judgment. It follows that this appeal must be dismissed with costs.

I would merely observe that in view of the present difficulties in Singapore arising out of the housing shortage, I have every sympathy with tenants but that does not exclude sympathy also with landlords in some cases who, having agreed to share their own house with somebody, find subsequently that conditions arise which make that sharing intolerable and then have to seek the assistance of the Courts in order to get rid of an unwelcome tenant, or co-sharer. Further it would appear as if the only reason in some cases for an appeal against a decision is that thereby the compulsory vacating of the premises may be considerably delayed.

Appeal Dismissed.